

United States Department of Agriculture



## **AGRICULTURAL MANAGEMENT ASSISTANCE PROGRAM**

**DRAFT  
Programmatic  
Environmental Assessment  
June 7, 2002**



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# **BACKGROUND**

## **I. Introduction**

The Natural Resources Conservation Service (NRCS) is promulgating a regulation (see Appendix A) to implement the conservation provisions of the Agricultural Management Assistance (AMA) Program, authorized by Section 524(b) of the Federal Crop Insurance Act, 7 U.S.C. 1524(b), as amended by Section 133 of the Agricultural Risk Protection Act of 2000, Public Law (P.L.) 106-224, and Section 2501 of the Farm Security and Rural Investment Act of 2002, P.L. 107-171. The National Environmental Policy Act of 1969 (NEPA) requires that Federal agencies prepare Environmental Impact Statements (EIS) for major federal actions significantly affecting the quality of the human environment. In addition, the Council on Environmental Quality (CEQ) regulations implementing NEPA (40 CFR Parts 1500-1508) require Federal agencies to prepare Environmental Assessments (EA) to assist them in determining whether they need to prepare an EIS for actions that have not been categorically excluded from NEPA.

NRCS regulations implementing the provisions of NEPA state that an EIS is normally required for "broad Federal assistance programs administered by NRCS when the environmental evaluation indicates there may be significant cumulative impacts on the human environment." 7 CFR 650.7 (a)(3). The environmental evaluation process indicated that it is unlikely there will be significant cumulative impacts on the quality of the human environment as a result of implementing the AMA program, particularly when focusing on the significant adverse impacts which NEPA is intended to help decision makers avoid and mitigate against. However, NRCS has developed this EA to further review the effects of the proposed program and to assist in determining whether implementing the AMA program conservation provisions will significantly affect the quality of the human environment such that NRCS must prepare an EIS. The proposed action under consideration here involves rulemaking, and no site-specific or ground-disturbing actions will occur as an immediate result of implementing the proposal. Additional environmental review at subsequent stages of program implementation will be undertaken consistent with NEPA requirements.

## **II. AMA Program Statutory Requirements**

The AMA program is a voluntary program providing financial assistance to agricultural producers in selected states. The statute, as amended by the Farm Security and Rural Investment Act of 2002, authorizes the Secretary to provide financial assistance to producers in Connecticut, Delaware, Maine, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Utah, Vermont, West Virginia, and Wyoming.

A producer may use the financial assistance NRCS provides through the AMA program to:

1. construct or improve watershed management structures or irrigation structures;
2. plant trees to form windbreaks or to improve water quality;

3. mitigate financial risk through resource conservation practices, including soil erosion control, integrated pest management, or transition to organic farming; and
4. conduct other related activities.

The total amount of all AMA payments made to a person (as defined in section 1001(5) of the Food and Security Act (7 U.S.C. 1308(5)), may not exceed \$50,000 for any year. The AMA program is funded through the Commodity Credit Corporation (CCC) and in fiscal years 2003 through 2007, the CCC is to make available \$20,000,000 to carry out the AMA program. In other fiscal years, the CCC is to make available \$10,000,000 to carry out the AMA program. Some portion of this amount, as determined by the Secretary, will be made available to NRCS to implement the conservation provisions of the AMA.

## **NEED FOR ACTION**

The need to which NRCS is responding in the proposed action is the need to provide financial assistance to producers to implement the following types of conservation practices in the 15 states identified in the AMA authorizing legislation:

- construction or improvement of watershed management structures or irrigation structures;
- tree planting to form windbreaks or to improve water quality;
- conservation practices which mitigate financial risk, including soil erosion control, integrated pest management, or transition to organic farming and
- other related conservation practices.

In implementing the program, there is a need to allow for flexibility to ensure the program addresses local agricultural and natural resource needs and conditions, as well as a need to keep administrative costs of the program to a minimum, and program requirements as consistent as possible with the requirements of other NRCS conservation programs. Consistency will simplify participation by eligible farmers and ranchers who enroll in other NRCS programs.

## **ALTERNATIVES**

### **I. Alternative 1, Proposed Action**

The proposed action is to implement the AMA regulation as described in the proposed rule, attached as Appendix A. The proposed action consists of the following elements:

- The Chief of NRCS, on behalf of CCC, will determine the funds available to particular States to implement the program.
- The NRCS State Conservationist, in consultation with the State Technical Committee, will determine eligible practices using a locally led process.
- There will be a continuous signup period, with ranking cutoff dates as determined by the State Conservationist in consultation with the State Technical Committee.

- The State Conservationist, in consultation with the State Technical Committee, will select applications based on State-developed ranking criteria and a ranking process that takes into account local and state priorities. The State Conservationist may also delegate the selection of applications to the local designated conservationist who will work in consultation with the local USDA Work Group.
- A conservation plan is required for the area covered by the AMA program cost-share agreement and becomes the basis for developing the cost-share agreement. The conservation plan must be acceptable to NRCS; be approved by the local conservation district; be signed by the participant, designated conservationist, and the conservation district; and clearly identify the conservation practices that will be cost-shared with AMA program funds, as well as the practices that must be carried out but for which no AMA program payments will be made.

## **II. Alternative 2, No Action**

This alternative represents conditions that would occur if no action were taken to implement the AMA program.

# **IMPACTS**

## **I. Introduction**

This section describes potential impacts of implementing the AMA program as described in the proposed rule shown in Appendix A. Promulgation of the rule itself will not directly result in impacts to the quality of the human environment; however, the conservation practices implemented using the AMA program funds will have an indirect effect in the eligible states. These conservation practices do affect the quality of the human environment.

The AMA program was first authorized when Section 524(b) of the Federal Crop Insurance Act, 7 U.S.C. 524(b), was amended by Section 133 of the Agricultural Risk Protection Act of 2000, P.L. 106-224. In fiscal year (FY) 2001, the AMA program was implemented under a Federal Register Notice at 66 FR 30400 (June 6, 2001). (See Appendix B.) In FY 2002, the AMA program was implemented under a Federal Register Notice at 67 FR 11459 (March 14, 2002). (See Appendix C.) The statute authorizing the AMA program was subsequently amended by Section 2501 of the Farm Security and Rural Investment Act of 2002, P.L. 107-171. This amendment increased the funding available for the program from \$10 million to \$20 million in fiscal years 2003 through 2007. In addition, before the 2002 amendment, the legislation gave the Secretary of Agriculture discretion to implement the program in 10 to 15 states in which participation in Federal crop insurance has historically been low. The Secretary therefore designated the following states as eligible to participate in the AMA program:

- Connecticut
- Delaware
- Maine
- Maryland
- Massachusetts
- Nevada
- New Hampshire
- New Jersey
- New York
- Pennsylvania
- Rhode Island
- Utah
- Vermont
- West Virginia
- Wyoming

In the 2002 amendment, Congress removed the Secretary's discretion and made the program applicable to producers in these same 15 States.

Because the substantive provisions of the program were not affected by the 2002 amendment to the Federal Crop Insurance Act, the proposed regulation shown in Appendix A contains substantially the same provisions as those in the Federal Register Notices announcing the availability of funds. Thus, actions taken under the 2001 program are an indicator of what is likely to occur when the program is implemented under the proposed action and are discussed below in reference to the impacts of Alternative 1, "Proposed Action".

## **II. Alternative 1, "Proposed Action"**

This section of the EA provides an overview of what conservation practices will most likely be implemented within the 15 States eligible to participate in the AMA program, and projects the number of acres likely to be treated and the physical effects of the most frequently implemented AMA program practices.

When the AMA program was implemented in FY 2001, \$7 million was available for NRCS to implement its AMA program authorities<sup>1</sup>, and more applications were received than there were funds available. Of the applications submitted, only 32.7 percent were funded and resulted in contracts. Table 1 shows the number of applications received, the number of contracts funded, and the acres actually enrolled in the AMA program, by state.

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<sup>1</sup> Other USDA agencies are responsible for implementing portions of the AMA program that do not involve implementing agricultural conservation measures. Thus, NRCS does not receive the full amount of authorized funding for AMA.

**Table 1: AMA Fiscal Year 2001 Participation**

<b>AMA State</b>	<b>Total Number of Applications Received</b>	<b>Number of Contracts Funded</b>	<b>Acres Enrolled in the AMA Program</b>
<b>Connecticut</b>	32	19	373
<b>Delaware</b>	21	12	340
<b>Maine</b>	169	28	1,535
<b>Maryland</b>	37	17	1,170
<b>Massachusetts</b>	140	24	372
<b>Nevada</b>	42	6	648
<b>New Hampshire</b>	26	2	765
<b>New Jersey</b>	22	22	246
<b>New York</b>	382	172	6,524
<b>Pennsylvania</b>	234	56	2,050
<b>Rhode Island</b>	6	3	31
<b>Utah</b>	19	12	8,413
<b>Vermont</b>	63	12	2,076
<b>West Virginia</b>	255	109	6,741
<b>Wyoming</b>	207	47	108,430
<b>TOTAL</b>	1,655	541	139,714

Clearly, the demand for program funds exceeded available amounts in most states. Based on the information in Table 1, it appears likely that States such as Pennsylvania, Wyoming, New York, Maine, and West Virginia will have the highest demand for funds based on the number of unfunded program applications.

Table 2 shows the percentage of applications received and contracts funded for each State participating in the AMA program. For example, Connecticut had 32 applications, which represents 1.9 percent of the 1,655 total applications received across all 15 states. Connecticut funded 19 of those applications, which represents 3.5 percent of the total applications funded by all 15 states combined. The table also shows by state the percent of applications received that were funded. For example, Connecticut was able to fund contracts for 59 percent of the applications it received in FY 2001. And finally, Table 2 shows the percent of total acres enrolled in the program for each state. Of the 139,714 total acres enrolled in the AMA program in FY 2001, Connecticut's 373 acres represent 0.27 percent.

**Table 2: Percentages of AMA Applications Funded, By State, in Fiscal Year 2001**

AMA State	Percent of Total Number of Applications Received	Percent of Total Applications Funded	Percent of State Applications Received that were Funded	Percent of Total Acres Enrolled
Connecticut	1.9	3.5	59.0	.27
Delaware	1.3	2.2	57.1	.24
Maine	10.2	5.2	16.6	1.10
Maryland	2.2	3.1	45.9	.84
Massachusetts	8.5	4.4	17.1	.27
Nevada	2.5	1.1	14.3	.46
New Hampshire	1.6	.4	7.7	.55
New Jersey	1.3	4.1	100	.18
New York	23.1	31.8	45.0	4.67
Pennsylvania	14.1	10.4	23.9	1.47
Rhode Island	.4	.6	50.0	.02
Utah	1.2	2.2	63.1	6.02
Vermont	3.8	2.2	19.0	1.49
West Virginia	15.4	20.1	42.7	4.82
Wyoming	12.5	8.7	22.7	77.60
<b>TOTAL</b>	100.0	100.0	N/A	100.00

New York, West Virginia, and Pennsylvania had the highest percentages of applications received and contracts funded even though they also have a high number of unfunded applications, and Wyoming, Utah, West Virginia and New York had the highest percentages of acres enrolled in the FY 2001 AMA program. Combined, New York, West Virginia, Pennsylvania, Wyoming and Utah represent both Eastern and Western resource concerns with a total of 73 percent of all contracts funded and 95 percent of all acres enrolled. Moreover, New York, West Virginia, Pennsylvania, and Wyoming are among the States with the greatest number of unfunded applications based on the 1991 program (see Table 1). Therefore, the conservation practices implemented in New York, West Virginia, Pennsylvania, Wyoming and Utah are considered representative of the types of practices implemented most frequently by all 15 states eligible to participate in the AMA program and most likely to be implemented in future years of the program. The conservation practices these states most commonly used in the AMA program are identified in Table 3.

Overall, NRCS received about 70 percent of available AMA program funds to implement conservation practices. The average cost to implement these practices was \$50 per acre. Therefore, assuming a similar trend continues, NRCS can expect to receive about \$14 million per year in fiscal years 2003 through 2007, resulting in conservation practices installed on about 280,000 acres in each of those years. Most of the practices installed will be those identified in Table 3.



**Table 3: Conservation Practices Used Most Frequently in FY 2001 AMA Program**

<b>Practice Name</b>	<b>Practice Number<sup>2</sup></b>
Animal Trails and Walkways	575
Contour Buffer Strips (Herbaceous)	332
Cover Crop	340
Critical Area Planting	342
Diversion	362
Fence	382
Filter Strip	393
Irrigation System, Micro-Irrigation	441
Pasture and Hay Planting	512
Pipeline	516
Pond	378
Range Planting	550
Spring Development	574
Waste Storage Facility	359
Water Well	642
Watering Facility (Trough or Tank)	614
Windbreak/Shelterbelt Establishment	380

NRCS developed network diagrams depicting the chain of natural resource effects resulting from the application of each practice. (See Appendix D.) Each of the diagrams first identifies the typical setting to which the practice is applied. This includes identification of the predominating land use and the resource concerns that trigger use of the practice. The diagrams then identify the practice used to address the resource concerns. Following identification of the practice, there is a description of the physical activities that are carried out to implement the practice. From there, the diagrams depict the occurrence of the direct, indirect and cumulative effects of the practice. Effects are qualified with a "+" or a "-" which denotes an increase ("+") or decrease ("-") in the effect. Pluses and minuses do not equate to good and bad or positive and negative. Only the general effects that are considered to be the most important ones from a national perspective are illustrated. In addition to the network diagrams, a photo and summary description about how each of these practices is intended to be used and the general effects of using the practice is found in Appendix D.

The effects of the practices may vary somewhat depending on the local ecosystem(s), methods of practice installations, and presence of special resources of concern in a particular state, such as the presence of a coastal zone, endangered or threatened species, historic or cultural resources, and the like. While effects on these resources may be described in general terms at the national level, they must be addressed at the state and local level. This is particularly true for endangered and threatened species, historic preservation, historic and cultural resources,

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<sup>2</sup> Practice numbers are assigned by NRCS for ease of reference and are found in the NRCS National Handbook of Conservation Practices.

essential fish habitat and other resources that are protected by special authorities that require consultation. NRCS will consult on a state or site-specific level as needed and appropriate, to ensure AMA program actions do not adversely affect endangered or threatened species, essential fish habitat, cultural resources, or any other protected resources and will implement practices in a manner that is consistent with the NRCS policy to avoid, mitigate or minimize adverse effects to the extent feasible.

For example, to ensure compliance with the Endangered Species Act, State Conservationists will invite representatives of the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS), as applicable, to all State Technical Committee meetings and encourage their involvement in the development of program criteria within the State. NRCS will also conduct additional programmatic consultations with FWS and NMFS at the State level as needed to ensure AMA program implementation is not likely to adversely affect species listed as endangered or threatened or species proposed for listing as endangered or threatened or designated critical habitat. Such consultation will also be used to identify ways the AMA program might further the conservation of protected species and identify situations in which no site-specific consultation would be needed.<sup>3</sup> Site-specific consultation will also be conducted as needed to avoid adversely affecting any protected species or habitat.

To ensure compliance with the National Historic Preservation Act and associated authorities, NRCS State Offices will follow the procedures outlined in the Advisory Council on Historic Preservation's (ACHP) regulations (36 CFR Part 800) or, in accordance with NRCS' alternate procedures (nationwide Programmatic Agreement), invite State Historic Preservation Officers (SHPO's) and federally recognized Tribes (or their designated Tribal Historic Preservation Officers) to enter into consultation agreements that highlight and focus review and consultation on those resources and locations that are of special concern to these parties. In addition, if no state-level agreements are developed with the SHPO's or Tribes, and/or if other consulting parties are identified, they will be afforded, as appropriate, an opportunity to advise the NRCS State Office during project-specific planning about their historic and cultural resource concerns so that they may be taken into account in accordance with the ACHP regulations. Similar processes will be followed, as needed and appropriate, to address other special requirements for the protection of the environment.

The practices implemented most frequently under the AMA program are most often used to support livestock operations, particularly grazing operations, and production of irrigated hay, both for grazing and for harvest as a crop for later use as livestock feed. Grazing lands include a myriad of land uses: rangelands, pasturelands, haylands, grazed forest lands, grazed croplands, and naturalized pastures. Conservation practices to support livestock operations are designed to reduce soil erosion, provide feed and water for livestock production; enhance wildlife food and habitat; enhance plant biodiversity; protect air, soil, and water resources; provide a basis for diversification of farm income; and reduce runoff that may carry manure and other contaminants to receiving water. They perform these functions by creating channels, covering the soil with

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<sup>3</sup> In addition to situations in which NRCS determined there would be no effect on protected species or habitat, site-specific consultation should not be needed when NRCS and FWS or NMFS agree a category of proposed actions is not likely to adversely affect a protected species or habitat and NRCS obtains an incidental take statement based on that agreement.

increased live vegetation, creating barriers, planting crops or other vegetation with specialized characteristics, or adjusting the techniques used to apply fertilizers or pesticides.

In addition to the primary effects mentioned above, other effects, both positive and negative, may occur. Soil condition may be improved, resulting in increased nutrient cycling, organic matter, and carbon sequestration. Livestock feed, soil organic matter, and biodiversity may increase. Plant growth and condition is improved when erosion is controlled on steep slopes and around feed areas. The increase in plant cover protects streams, ponds, and other water supplies from sediment and other possible contaminants, as well as providing food for livestock and wildlife. Nutrient cycling may be improved, and the corresponding need for purchased nutrients may decrease. Aesthetics may be improved. Snow trapping may occur, saline seeps may be reduced, and water use efficiency by crops may be improved. Many of the practices will decrease runoff while correspondingly increasing infiltration, which may result in both positive and negative effects, such as the tradeoff between increased groundwater infiltration and reduced surface flows. In the case of converting hay grown for use as a crop to a grazing operation, the total costs and fuel used to produce the crop will eventually be decreased because the animals, instead of the operator, harvest the feed.

Controlled access to sensitive areas should lead to a reduction in contaminants, pathogens, and sediments in receiving waters, as well as protection and productivity of desired plant species. Reduced runoff and erosion from other practices should also lead to reduced loss of soluble and sediment-bound contaminants to receiving water bodies, and snow trapping should lead to increased water storage, leading to healthier crops in many cases. Reduced need for nutrient applications will reduce farmer costs, leading to increased net income. Development of water facilities and mechanisms for providing source water for livestock leads to an increase in animal health and production. These same practices may interfere with natural water flow and/or enhance saltwater intrusion and possibly allow potential contaminants into water bodies. Some wildlife species may also be negatively affected, though some practices, such as field borders, also improve wildlife habitat and thus lead to increased wildlife. These and other indirect effects vary, depending on the particular conditions of each site.

Indirect effects can lead to cumulative effects such as income stability for producers and communities, and overall improvements in water quality, habitat suitability and human and animal health. These effects occur when the practice is applied within the same region on many farms or fields.

While program activities do have positive impacts on the environment, the limitations in the program funding results in site-specific outputs. These outputs do have positive cumulative impacts on the environment, but they seldom result in measurable or quantifiable environmental outcomes. For example, in a watershed that has identified water quality impairments because of nutrients as the resource of concern, the AMA program does not provide enough technical and financial assistance to plan and implement the appropriate conservation practices comprehensively throughout the watershed so that the water quality can show measurable improvements in a short time frame. However, the conservation practices that the program can provide funding to plan and implement, do provide positive environmental benefits for the specific field or treatment area on which they are implemented when they are implemented

according to NRCS policies and conservation practice standards and specifications, with due consideration to unique, site-specific conditions. When AMA program practices are implemented together with other conservation programs, they will lead to improvements in the condition and sustainability of natural resources and the communities that depend on these resources for their livelihood.

### **III. Alternative 2, "No Action**

If the AMA program were not implemented, farmers and ranchers participating in the program would most likely not be able to implement these conservation practices on their own. Agricultural producers typically do not have a good understanding of the science-based technology on which conservation systems are developed. They rely on the program technical assistance to provide them with the necessary education and information required to make sound decisions about which suite of practices to implement in order to address identified resource concerns. They very often also lack the economic resources to implement the potentially expensive structural conservation practices that are often required to adequately protect natural resources. Without the program financial assistance, most of the conservation practices needed would not be implemented. Consequently, without the technical and financial assistance provided by the program, agricultural producers would face environmental and/or financial risks to their operations that those who participate in the program would not.

While the cumulative total of environmental benefits of the AMA program may be difficult to measure due to the program being limited to 15 states, the program does have an influence on the environmental health of the land on which it is implemented. The program technical assistance provides the agricultural producer with sound knowledge of what is needed to protect and enhance the natural resources in a holistic approach. This holistic approach teaches the producer not only what conservation practices are necessary to address the identified resource concern(s), but also teaches them why they are needed, how to implement and maintain them, and their impacts on other natural resources on the landscape. If there is no program, the opportunity to receive this extremely valuable technical assistance is reduced.

## **List of Persons and Agencies Consulted**

### Natural Resources Conservation Service

\*Carl Hutcherson, Acting Regional Technology Specialist, NRCS South Central Region, NRCS, Fort Worth, Texas

\*Andrée DuVarney, National Environmental Coordinator, NRCS, Washington, D.C.

\*Wally Turner, National AMA Program Manager, NRCS, Washington, D.C.

\* Worked directly in preparing this EA.

### Network Diagramming Assistance

Carolyn Adams, Director, Watershed Science Institute, NRCS, Raleigh, NC

Barry H. Rosen, Ph.D., WSSI-Raleigh, NC

Barry L. Kintzer, P.E., National Environmental Engineer, CED, Washington, DC

Carl Hutcherson, Acting Regional Technology Specialist, South Central Region, Fort Worth, TX

Jerry Lemunyon, Conservation Agronomist, RAD, Ft. Worth

David C. Moffit, Environmental Engineer, NWMC-Ft. Worth, TX

Kathryn Staley, Fish Biologist, WHMI-Corvallis, OR

Ron Harris, Natural Resource Specialist, AHCWPD, Beltsville, MD

Steffanie Aschmann, Agroecologist, WSSI-Lincoln, NE

David Anderson, Agricultural Engineer, WSSI-Lincoln, NE

Dennis Carman, Agricultural Engineer, NWMC-Little Rock, AR

Doug Seibel, Engineer, Quality Assurance Staff, Washington, DC

Charlie Rewa, Wildlife Biologist, WHMI-Patuxent, MD

Bill Kuenstler, Agronomist, National Cartography and Geospatial Center, Ft. Worth, TX

Arnold King, National Technical Coordinator, Cooperating Scientist, Ft. Worth, TX

Jerry Lemunyon, Conservation Agronomist, RAD-Ft. Worth, TX

Ron Harris, Natural Resource Specialist, AHCWPD, Beltsville, MD

Kerry Robinson, Hydraulic Engineer, WSSI-Raleigh, NC

Betty McQuaid, Ph.D., WSSI-Raleigh, NC

Jim Cropper, Ph.D., Forage Management Specialist, GLTI, University Park, PA

Arnold Norman, Ecosystem Management Specialist, GLTI, Ft. Worth, TX

George Peacock, Range Management Specialist, GLTI, Ft. Worth, TX

Ken Spaeth, Ph.D., Range Hydrology Specialist, GLTI, Boise, ID

Elvis Graves, liaison to EPA, EPA, North Carolina

Jeff Schmidt, Community Assistance Coordinator, BLM/NRCS, AZ

John Beyer, State Air Quality Specialist/NRI Coordinator, Fresno, CA

Roel Vining, Cooperating Scientist, Purdue University, IN

John Brenner, Cooperating Scientist, Fort Collins, CO

Beth Sauerhaft, National Ecological Climatologist, NRCS, Washington, DC



## **APPENDICES**

**Appendix A – 7 CFR Part 638, Proposed Rule, Agricultural Management Assistance Program**

**Appendix B – Federal Register Notice Announcing Availability of Agricultural Management Assistance Program Funds, 66 FR 30400 (June 6, 2001)**

**Appendix C – Federal Register Notice Announcing Availability of Agricultural Management Assistance Program Funds, 67 FR 11459 (March 14, 2002)**

**Appendix D – AMA Practice Photos, Descriptions and Network Diagrams**

**7 CFR Part 638, Proposed Rule,  
Agriculture Management Assistance Program**

[Billing Code: 3410-16]

**DEPARTMENT OF AGRICULTURE  
Natural Resources Conservation Service  
7 CFR Part 638**

**RIN: 0578-AA31**

**Agricultural Management Assistance**

**AGENCY: Natural Resources Conservation Service, USDA**

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** Section 524(b) of the Federal Crop Insurance Act, 7 U.S.C. 1524(b), as added by Section 133 of the Agricultural Risk Protection Act of 2000, Public Law 106-224, signed into law on June 22, 2000, authorized USDA to implement the Agricultural Management Assistance Program. This rule sets forth the procedures for producers to apply and participate in the Agricultural Management Assistance Program (AMA).

**Dates:** Comments must be received by [insert date of 30 days from publication date].

**ADDRESSES:** Send comments by mail to Conservation Operations Division, NRCS, P.O. Box 2890 or by e-mail to [mark.berkland@usda.gov](mailto:mark.berkland@usda.gov); attn: Agricultural Management Assistance.

**FOR FURTHER INFORMATION CONTACT:** Mark W. Berkland, Director, Conservation Operations Division, NRCS, P.O. Box 2890, Washington, DC 20013-2890, telephone: (202) 720-1845; fax: (202) 720-4265; submit e-mail to: [mark.berkland@usda.gov](mailto:mark.berkland@usda.gov), Attention: Agricultural Management Assistance.

**SUPPLEMENTARY INFORMATION:**

**Executive Order 12866**

Pursuant to Executive Order 12866 (58 FR 51735, October 4, 1993), it has been determined that this proposed rule is a non-significant regulatory action because it will not result in an annual effect on the economy. The administrative record is available for



public inspection in Room 6037, South Building, USDA, 14th and Independence Ave, SW, Washington, D.C.

### Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because CCC is not required by 5 U.S.C. 533 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

### Environmental Analysis

A draft Environmental Assessment (EA) has been prepared to assist in determining whether this proposed rule, if implemented, would have a significant impact on the quality of the human environment such that an EIS should be prepared. Based on the results of the draft EA, NRCS proposes issuing a finding of no significant impact (FONSI) before a final rule is published. Copies of the draft EA and FONSI may be obtained from Walley Turner, Conservation Operations Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, D.C. 20013-2890. Provide comments on the draft EA and FONSI to the National Environmental Coordinator, Ecological Sciences Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, D.C., 20013-2890.

### Civil Rights Impact Analysis

It has been determined through a Civil Rights Impact Analysis that the issuance of this proposed rule will not have a significant effect on minorities. Copies of the Civil Rights Impact Analysis and Finding of No Significant Impact may be obtained from Walley Turner, Conservation Operations Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, D.C. 20013-2890.

### Paperwork Reduction Act

This proposed rule sets forth procedures for implementing AMA. CCC needs certain information from potential applicants, in order to carry out the requirements of the program. CCC submitted the information collection requirements in this proposed rule to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. CCC prepared an Information Collection Request (ICR) document; the public may obtain a copy of this request from Walley Turner, Conservation Operations Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, D.C. 20013-2890.

### Executive Order 12788

This proposed rule has been reviewed in accordance with Executive Order 12778. The provisions of this proposed rule are not retroactive. Furthermore, the provisions of this proposed rule preempt State and local laws to the extent such laws are inconsistent

with this proposed rule. Before an action may be brought in a Federal court of competent jurisdiction, the administrative appeal rights afforded persons at 7 CFR parts 614, 780 and 11 must be exhausted.

#### Unfunded Mandates Reform Act of 1995

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4, CCC assessed the effects of this rulemaking action on State, local, and tribal governments, and the public. This action does not compel the expenditure of \$100 million or more by any State, local, or tribal governments, or anyone in the private sector; therefore a statement under section 202 of the Unfunded Mandates Reform Act of 1995 is not required.

#### Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994

USDA classified this proposed rule as “not major” under section 304 of the Department of Agriculture Reorganization Act of 1994, Pub. L. 104-354. Therefore, a risk assessment was not required.

### List of Subjects in 7 CFR Part 639

Soil and Water Conservation. Conservation Practices. Conservation Plan. Conservation Contract.

Accordingly, Title 7 of the code of Federal Regulations is amended by adding a new part 638 to read as follows:

#### **PART 638-AGRICULTURAL MANAGEMENT ASSISTANCE** **Subpart A – General Provisions**

##### § 638.1 Applicability.

Through the Agricultural Management Assistance (AMA) program, the Commodity Credit Corporation (CCC) provides financial assistance funds annually to producers in selected states to construct or improve water management structures or irrigation structures; to plant trees to form windbreaks or to improve water quality; and to mitigate risk through production diversification or resource conservation practices, including soil erosion control, integrated pest management, or transition to organic farming. AMA is applicable in 15 states, designated by the Secretary, in which participation in the Federal Crop Insurance Program is historically low.

## § 638.2 Administration.

(a) Administration and implementation of the conservation provisions of AMA is assigned to the Natural Resources Conservation Service (NRCS). The Farm Service Agency is responsible for 'person' determinations and making cost-share payments.

(b) NRCS shall:

- (1) Provide overall management and implementation leadership for AMA;
- (2) Establish policies, procedures, priorities, and guidance for implementation;
- (3) Establish cost-share payment limits;
- (4) Determine eligible practices;
- (5) Develop and approve conservation plans and contracts with selected participants;
- (6) Provide technical leadership for implementation, quality assurance, and evaluation of performance; and
- (7) Make funding decisions and determine allocations of AMA funds.

(c) FSA shall:

- (1) Determine 'person' eligibility; and
- (2) Make cost-share payments for practices completed.

## § 638.3 Definitions.

The following definitions shall apply to this part and all documents issued in accordance with this part, unless specified otherwise:

Agricultural land means cropland, hayland, pastureland, rangeland, land used for subsistence purposes, and other land, such as forestland, on which crops or livestock are produced.

Applicant means an agricultural producer who has requested in writing to participate in AMA. Producers who are members of a joint operation shall be considered one applicant.

Chief means the Chief of NRCS, USDA, or designee.

Conservation district means a political subdivision of a State, Indian tribe, or territory, organized pursuant to the State or territorial soil conservation district law, or tribal law.

The subdivision may be a conservation district, soil conservation district, soil and water conservation district, resource conservation district, natural resource district, land conservation committee, or similar legally constituted body.

Conservation practice means a specified treatment, such as a structural or vegetative practice or a land management practice, which is planned and applied according to NRCS standards and specifications.

Contract means a legal document that specifies the rights and obligations of any person who has been accepted for participation in AMA.

Cost-share payment means the financial assistance from CCC to the participant to share the cost of installing eligible practices.

Designated conservationist means an NRCS employee whom the State conservationist has designated as responsible for administration of AMA.

Indian tribe means any Indian tribe, band, nation, or other organized group or community which is recognized as eligible for the special assistance and services provided by the United States to Indians because of their status as Indians.

Indian trust lands means real property in which (1) the United States holds title as trustee for a Indian or tribal beneficiary, or (2) an Indian or tribal beneficiary holds title and the United States maintains a trust relationship.

Life-span means the minimum time period in which the conservation practices are to be maintained and used for their intended purpose.

Liquidated damages means a sum of money stipulated in the contract that the participant agrees to pay if the participant breaches the contract. The sum represents an estimate of the anticipated or actual harm caused by the breach, and reflects the difficulties of proof of loss and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy.

Operation and maintenance means work that shall be performed by the participant to keep the applied conservation practice functioning for the intended purpose during its life span. Operation includes the administration, management, and performance of non-maintenance actions needed to keep the completed practice safe and functioning as intended. Maintenance includes work to prevent deterioration of the practice, repairing damage, or replacement of the practice to its original condition if one or more components fail.

Participant means an applicant who is a party to an AMA contract.

Producer means a person who is engaged in agricultural production.

Secretary means the Secretary of the United States Department of Agriculture.

State Conservationist means the NRCS employee authorized to direct and supervise NRCS activities in a State, the Caribbean Area, or the Pacific Basin Area.

State Technical Committee means a committee established by the Secretary in a State pursuant to 16 U.S.C. 3861.

Technical assistance means the personnel and support resources needed to conduct conservation practice survey, layout, design, installation, and certification; training and providing quality assurance for professional conservationists; and evaluation and assessment of AMA.

Unit of concern means a parcel of agricultural land that has natural resource conditions that are of concern to the participant.

#### § 638.4 AMA requirements.

(a) Participation in AMA is voluntary. The participant, in cooperation with the local conservation district, applies for practice installation for the farm or ranching unit of concern. The CCC provides cost-share payments through contracts to apply needed conservation practices within a time schedule specified in the contract.

(b) The Chief determines the funds available to NRCS for financial assistance according to the purpose and projected cost for which the financial assistance is provided in a fiscal year. The Chief allocates the funds available to carry out AMA. Funding obligations shall not exceed the financial assistance provided in a fiscal year.

(c) To be eligible to participate in AMA, an applicant must:

(1) Meet the Food Security Act 'person' definition;

(2) Have control of the land for the life of the proposed contract period.

(i) An exception may be made by the Chief in the case of land allotted by the Bureau of Indian Affairs (BIA), tribal land, or other instances in which the Chief determines that there is sufficient assurance of control;

(ii) If the applicant is a tenant of the land involved in agricultural production the applicant shall provide CCC with the written concurrence of the landowner in order to apply an eligible practice(s).

(3) submit an application that is acceptable to CCC and is in compliance with the terms and conditions of AMA;

(4) Supply information as required by CCC to determine eligibility for AMA.

(d) Land used as agricultural land that NRCS determines poses a threat to watershed or irrigation management; water quality; or financial risk due to soil erosion, pest infestation; or cultural practices including the existing agricultural management practices of the applicant that may be eligible for enrollment in AMA. Additionally, land may only be considered for enrollment in AMA if NRCS determines that the land is:

(1) Privately owned land;

(2) Publicly owned land where:

(i) The land is under private control for the contract period and is included in the participant's operating unit;

(ii) Conservation practices will contribute to an improvement in the identified natural resource concern; and

(iii) The participant has provided CCC with written authorization from the government landowner to apply the conservation practices; or

(3) The land is federally recognized Tribal, BIA allotted, or Indian trust land.

#### § 638.5 Conservation practices.

(a)(1) The State Conservationist, in consultation with the State Technical Committee, shall determine the conservation practices eligible for AMA payments. To be considered eligible conservation practices, the practices must improve soil or water management or water quality, or mitigate financial risk through resource conservation.

(2) The State Conservationist, in consultation with the State Technical Committee, shall determine the conservation practices eligible for AMA payments, using a locally led process, and guidance in paragraph (a)(1).

### **Subpart B - Contracts**

#### § 638.20 Applications for participation and selecting applications for contracting.

(a) Any producer who has eligible land may submit an application for participation in AMA at a USDA service center. Producers who are members of a joint operation shall file a single application for the joint operation.

(b) CCC will accept applications throughout the year. The State Conservationist, in consultation with the State Technical Committee, will distribute information on the availability of assistance and the state-specific goals. Information will be provided that explains the process to request assistance.

(c) The State Conservationist, in consultation with the State Technical Committee, will develop ranking criteria and a ranking process to select applications, taking into account local and state priorities.

(d) The State Conservationist, in consultation with the State Technical Committee, will rank and select applications for contracting based on the state-developed ranking criteria and ranking process.

(e) The designated conservationist will work with the applicant to collect the information necessary to evaluate the application using the ranking criteria.

(f) FSA shall determine 'person' eligibility and make contract payments.

§ 638.21 Contract requirements.

(a) In order for a participant to receive cost-share payments, the participant shall enter into a contract agreeing to implement eligible conservation practices.

(b) An AMA contract shall:

(1) Incorporate by reference all portions of a unit applicable to AMA;

(2) Be for a duration of 3 to 10 years;

(3) Incorporate all provisions as required by law or statute, including participant requirements to:

(i) Not conduct any practices on the farm or ranch unit of concern that would tend to defeat the purposes of the contract according to section § 638.25, Contract Violations and Termination;

(ii) Refund any AMA payments received with interest, and forfeit any future payments under AMA, on the violation of a term or condition of the contract, consistent with the provisions of §638.25;

(iii) Refund all AMA payments received on the transfer of the right and interest of the producer in land subject to the contract, unless the transferee of the right and interest agrees to assume all obligations of the contract, consistent with the provisions of § 638.24; and

(iv) Supply information as required by CCC to determine compliance with the contract and requirements of AMA.

(4) Specify the participant's requirements for operation and maintenance of the applied conservation practices consistent with the provisions of § 638.22; and

(5) Any other provision determined necessary or appropriate by CCC.

(c) The participant must apply the practice(s) within 10 years of signing a contract.

§ 638.22 Conservation practice operation and maintenance.

The contract shall incorporate the operation and maintenance of the conservation practice(s) applied under the contract. The participant shall operate and maintain the conservation practice(s) for its intended purpose for the life span of the conservation practice, as identified in the contract or conservation plan, as determined by CCC. NRCS may periodically inspect the conservation practices during the life span of the practices as specified in the contract to ensure that operation and maintenance is occurring.

§ 638.23 Cost-share payments.

(a)(1) The Federal share of cost-share payments to a participant shall be 75 percent of the actual cost of an eligible practice. In no instance shall the total financial contributions for an eligible practice from all public and private entity sources exceed 100 percent of the actual cost of the practice.

(2) Participants may contribute their portion of the costs of practices through in-kind contributions, including labor and materials, providing the materials contributed meet the FOTG standards and specifications for the practice being installed.

(3) Cost-share payments will not be made to a participant who has applied or initiated the application of a conservation practice prior to approval of the contract.

(b) The total amount of cost-share payments paid to a person under this part may not exceed:

(1) \$50,000 for any fiscal year; and

(c) To determine eligibility for payments, CCC shall use the provisions in 7 CFR Part 1400 related to the definition of a 'person' and the limitation of payments, except that:

(1) States, political subdivisions, and entities thereof will not be persons eligible for payment.

(2) For purposes of applying the payment limitations provided for in this section, the provisions in part 1400, subpart C for determining whether persons are actively engaged in farming, subpart E for limiting payments to certain cash rent tenants, and subpart F as the provisions apply to determining whether foreign persons are eligible for payment, will not apply.



(ii) With respect to land under an AMA contract which is inherited during the contract period, the \$50,000 fiscal year limitation shall not apply to the extent that the payments from any contracts on the inherited land cause an heir, who was party to an AMA contract on other lands prior to the inheritance, to exceed the annual limit.

(iii) With regard to contracts on tribal land, Indian trust land, or BIA allotted land, payments exceeding one limitation may be made to the tribal venture if an official of the BIA or tribal official certifies in writing that no one person directly or indirectly will receive more than the limitation.

(4) Any cooperative association of producers that markets commodities for producers shall not be considered to be a person eligible for payment.

(5) The status of an individual or entity on the date of the application shall be the basis on which the determination of the number of persons involved in the farming operation is made.

(d) The participant and NRCS must certify that a conservation practice is completed in accordance with the contract before CCC will approve the payment of any cost-share payment.

#### § 638.24 Contract modifications, extensions, and transfers of land.

(a) The participant and CCC may modify a contract if the participant and CCC agree to the contract modification.

(b) Contracts may be extended for contracts that run less than ten years up to the ten year contract limit in order for the participant to complete the practices scheduled in the contract, if requested by the participant before the contract expires.

(c) The parties may agree to transfer a contract with the agreement of all parties to the contract. The transferee must be determined by CCC to be eligible and shall assume full responsibility under the contract, including operation and maintenance of those conservation practices already installed and to be installed as a condition of the contract.

(d) CCC may require a participant to refund all or a portion of any assistance earned under AMA if the participant sells or loses control of the land under an AMA contract and the new owner or controller is not eligible to participate in AMA or refuses to assume responsibility under the contract.

#### § 638.25 Contract violations and termination.

(a)(1) If CCC determines that a participant is in violation of the terms of a contract or documents incorporated by reference into the contract, CCC shall give the participant a reasonable time, as determined by the State Conservationist, to correct the violation

and comply with the terms of the contract and attachments thereto. If a participant continues in violation, the State Conservationist may terminate the AMA contract.

(2) Notwithstanding the provisions of (a)(1) of this section, a contract termination shall be effective immediately upon a determination by the State Conservationist that the participant has submitted false information or filed a false claim, or engaged in any act for which a finding of ineligibility for payments is permitted under the provisions of §638.35, or in a case in which the actions of the party involved are deemed to be sufficiently purposeful or negligent to warrant a termination without delay.

(b)(1) If CCC terminates a contract, the participant shall forfeit all rights for future payments under the contract and shall refund all or part of the payments received, plus interest determined in accordance with part 1403 of this chapter. The State Conservationist has the option of requiring only partial refund of the payments received if a previously installed conservation practice can function independently, is not affected by the violation or other conservation practices that would have been installed under the contract, and the participant agrees to operate and maintain the installed conservation practice for the life span of the practice.

(2) If CCC terminates a contract due to breach of contract or the participant voluntarily terminates the contract before any contractual payments have been made, the participant shall forfeit all rights for further payments under the contract and shall pay such liquidated damages as are prescribed in the contract. The State Conservationist will have the option to waive the liquidated damages depending upon the circumstances of the case.

(3) When making all contract termination decisions, CCC may reduce the amount of money owed by the participant by a proportion which reflects the good faith effort of the participant to comply with the contract, or the hardships beyond the participant's control that have prevented compliance with the contract.

(4) The participant may voluntarily terminate a contract if CCC agrees based on CCC's determination that termination is in the public interest.

(5) In carrying out its role in this section, NRCS may consult with the local conservation district.

## **Subpart C - General Administration**

### **§ 638.30 Appeals.**

(a) A participant may obtain administrative review of an adverse decision under AMA in accordance with parts 11 and 614, Subparts A and C, of this title, except as provided in paragraph (b) of this section.

(b) The following decisions are not appealable:

- (1) Payment rates, payment limits, and cost-share percentages;
- (2) NRCS funding allocations to States;
- (3) Eligible conservation practices; and
- (4) Other matters of general applicability, including.
  - (i) Technical standards and formulas
  - (ii) Denial of assistance due to lack of funds or authority; or
  - (iii) Science-based formulas and criteria.

§ 638.31 Compliance with regulatory measures.

Participants who carry out conservation practices shall be responsible for obtaining the authorities, rights, easements, or other approvals necessary for the implementation, operation, and maintenance of the conservation practices in keeping with applicable laws and regulations. Participants shall be responsible for compliance with all laws and for all effects or actions resulting from the participant's performance under the contract.

§ 638.32 Access to operating unit.

Any authorized CCC representative shall have the right to enter an operating unit or tract for the purpose of ascertaining the accuracy of any representations made in a contract or in anticipation of entering a contract, as to the performance of the terms and conditions of the contract. Access shall include the right to provide technical assistance and inspect any work undertaken under the contract. The CCC representative shall make a reasonable effort to contact the participant prior to the exercise of this provision.

§ 638.33 Performance based upon advice or action of representatives of CCC.

If a participant relied upon the advice or action of any authorized representative of CCC, and did not know or have reason to know that the action or advice was improper or erroneous, the State Conservationist may accept the advice or action as meeting the requirements of AMA and may grant relief, to the extent it is deemed desirable by CCC, to provide a fair and equitable treatment because of the good-faith reliance on the part of the participant.

§ 638.34 Offsets and assignments.

(a) Except as provided in paragraph (b) of this section, any payment or portion thereof to any person shall be made without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations

governing offsets and withholdings found in part 1403 of this chapter shall be applicable to contract payments.

(b) Any producer entitled to any payment may assign any payments in accordance with regulations governing assignment of payment found at part 1404 of this chapter.

§ 638.35 Misrepresentation and scheme or device.

(a) A producer who is determined to have erroneously represented any fact affecting an AMA determination made in accordance with this part shall not be entitled to contract payments and must refund to CCC all payments, plus interest determined in accordance with part 1403 of this chapter.

(b) A producer who is determined to have knowingly:

(1) Adopted any scheme or device that tends to defeat the purpose of AMA;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting an AMA determination, shall refund to CCC all payments, plus interest determined in accordance with part 1403 of this chapter, received by such producer with respect to all contracts. The producer's interest in all contracts shall be terminated.

Signed at Washington, D.C. on \_\_\_\_\_, 2002

BRUCE I. KNIGHT  
Chief  
Natural Resources Conservation Service

**Federal Register Notice Announcing Availability of Agricultural  
Management Assistance Program Funds, 66 FR 30400 (June 6, 2001)**

[Federal Register: June 6, 2001 (Volume 66, Number 109)]  
[Notices]  
[Page 30400-30402]  
From the Federal Register Online via GPO Access [wais.access.gpo.gov]  
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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Agricultural Management Assistance

AGENCY: Commodity Credit Corporation, United States Department of  
Agriculture.

ACTION: Notice of availability of program funds for agricultural  
management assistance.

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SUMMARY: This notice announces the availability of funds for  
Agricultural Management Assistance (AMA) to implement Section 524(b) of  
the Federal Crop Insurance Act, 7 U.S.C. 1524(b), as added by Section  
133 of the Agricultural Risk Protection Act of 2000, Public Law 106-  
224. The Commodity Credit Corporation (CCC) administers the funds under

the general supervision of a Vice President of the CCC who is the Chief  
of the Natural Resources Conservation Service (NRCS). CCC is announcing  
the availability of funds under Section 524(b) of the Federal Crop  
Insurance Act. Section 524(b) authorizes the Secretary of Agriculture  
to use \$10 million of CCC funds annually for cost share assistance to  
producers in 15 States in which participation in the Federal Crop  
Insurance Program is historically low. The 15 States include  
Connecticut, Delaware, Maine, Maryland, Massachusetts, Nevada, New  
Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Utah,  
Vermont, West Virginia, and Wyoming. The cost share assistance will  
encourage and assist producers in the selected States to adopt natural  
resources conservation practices and investment strategies that will  
reduce or mitigate risks to their agricultural enterprises.

DATES: Fund will be available from June 6, 2001 to September 30, 2001.

ADDRESSES: Address all comments to: Conservation Operations Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013-2890.

FOR FURTHER INFORMATION CONTACT: Mark W. Berkland, Director, or Gary Gross, AMA Program Manager, Conservation Operations Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, D.C. 20013, (202) 720-1845, fax: 202-720-4265; Submit electronic comments to: mark.berkland@usda.gov or gary.gross@usda.gov.

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 524(b) of the Federal Crop Insurance Act, 7 U.S.C. 1524(b), was added by Section 133 of the Agricultural Risk Protection Act of 2000, (Pub. L. 106-224, June 22, 2000). Section 524(b) authorizes the Secretary of Agriculture (Secretary) to use \$10 million of CCC funds for cost share assistance in 15 States where participation in the Federal Crop Insurance program is historically low. The 15 States designated by the Secretary are Connecticut, Delaware, Maine, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Utah, Vermont, West Virginia, and Wyoming. The Risk Management Agency (RMA), Agricultural Marketing Service (AMS), and NRCS will administer the funds in such amounts per agency as determined by the Secretary.

Section 524(b) (2) (A), (B), and (C), provides for cost-share assistance to producers to: construct or improve water management structures or irrigation structures; plant trees for windbreaks or improve water quality; and mitigate risks through production diversification or resource conservation practices, including soil erosion control, integrated pest management, or transition to organic farming.

Section 524(b) (2) (D) and (E), provides for cost-share assistance to producers to: enter into futures, hedging, or options contracts in a manner designed to help reduce production, price, or revenue risk; and enter into agricultural trade options as a hedging transaction to reduce production, price, or revenue risk.

This notice deals with the funding administered by NRCS, approximately \$6 million, to carry out the conservation provisions of Section 524(b) (2) (A), (B), and (C).

The Chief of NRCS, on behalf of CCC, will determine the funds available to the States for financial and technical assistance in a fiscal year.

The NRCS State Conservationist, in consultation with the State Technical Committee, will determine eligible practices using a locally led process. Eligible conservation practices will be those practices that improve soil or water management or water quality, or mitigate financial risk through resource conservation. AMA does not provide for incentive payments.

There will be a continuous signup period, with ranking cutoff dates as determined by the State Conservationist in consultation with the State Technical Committee.

The State Conservationist, in consultation with the State Technical Committee, will select applications based on State-developed ranking criteria and a ranking process, taking into account local and state priorities. The State Conservationist may also delegate the selection

of applications to the local designated conservationist who will work in consultation with the local USDA Work Group.

#### AMA Requirements

CCC will accept applications throughout the year. The State Conservationist, in consultation with the State Technical Committee, will widely distribute information on the availability of assistance and the State-specific goals. Information will be provided that explains the process to request assistance.

Applicants must own or control the land for which assistance is being sought and agree to implement specific eligible conservation practices on the land. The applicants must meet the definition of ``person'' as set out in Section 1001(5), of the Food Security Act, 7 U.S.C. 1308(5), as determined by the Farm Service Agency (FSA). Any cooperative association of producers that markets commodities for producers shall not be considered to be a person eligible for payment. The status of an individual or entity on the date of the application shall be the basis on which the determination of the number of persons involved in the farming operation is made. There will be a 5 to 10 year cost share agreement period to install eligible practices. Cost share practices need to be maintained for the life of the practice. The maximum payment to any one person under the AMA program is \$50,000 for any fiscal year.

The Federal share of cost-share payments shall be 75 percent of the cost of an eligible practice(s), based on percent of actual cost, percent of actual cost with not-to-exceed limits, flat rates, or average costs. Producers will be paid upon certification of the completion of the approved practice(s). Producers may contribute to the application of a cost-share practice through in-kind contributions. Eligible in-kind contributions include: personal labor; use of personal equipment; donated labor or materials; and use of on-hand or used materials that meet the requirements for the practice to be installed. In no instance shall the total financial contributions for an eligible practice from all public and private entity sources exceed 100 percent of the actual cost of the practice. Cost-share payments will not be made to a participant who has applied or initiated the application of a conservation practice prior to approval of the cost share agreement.

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Eligible participants must have control of the land for the life of the cost share agreement period. An exception may be made by the Chief of NRCS in the case of land allotted by the Bureau of Indian Affairs (BIA), tribal land, or other instances in which the Chief of NRCS determines that there is sufficient assurance of control; or the applicant is a tenant of the land involved in agricultural production and the applicant provides CCC with the written concurrence of the landowner in order to apply an eligible practice(s).

Eligible land includes land used as agricultural land on which NRCS determines that assistance is needed to construct or improve watershed management structures or irrigation structures; plant trees to form windbreaks or to improve water quality; or to mitigate financial risk through production diversification or resource conservation practices, including soil erosion control, integrated pest management, or transition to organic farming. Additionally, land may only be considered for enrollment in AMA if NRCS determines that the land is

privately-owned or publicly-owned where the land is under private control for the length of the cost share agreement and is included in the participant's operating unit. The conservation practices installed on public land must contribute to an improvement in the identified natural resource concern as well as benefit private land. The applicant must provide CCC with written authorization from the government landowner to apply the conservation practices. Land that is Federally recognized Tribal, BIA allotted, or Indian trust land may be considered for enrollment in AMA.

Applicants must submit an application (CCC-1200 form) to CCC to be considered for participation in AMA. Any producer who has eligible land may obtain and submit an application for participation in AMA at a USDA service center. Producers who are members of a joint operation shall file a single application for the joint operation. A NRCS conservationist will work with the applicant to collect the information necessary to evaluate the application using the State-developed ranking criteria.

#### Conservation Plan Requirement

A conservation plan is required for the area to be included in the AMA cost share agreement and becomes the basis for developing the cost share agreement. The conservation plan must be acceptable to NRCS; be approved by the local conservation district; be signed by the participant, designated conservationist, and the conservation district; and clearly identify the conservation practices that will be cost shared with AMA funds and the non-cost shared practices needed in the conservation plan.

#### Cost Share Agreement Requirements

Participants will enter into a cost share agreement agreeing to implement eligible conservation practices. An AMA cost share agreement will incorporate by reference all portions of a unit applicable to AMA and be for a duration of 5 to 10 years.

Cost share agreements will incorporate all provisions as required by law or statute, including requirements to not conduct any practices on the farm or ranch unit of concern that would tend to defeat the purposes of the cost share agreement; refund to CCC any AMA payments received with interest, and forfeit any future payments under AMA, on the violation of a term or condition of the cost share agreement; refund all AMA payments received on the transfer of the right and interest of the producer in land subject to the cost share agreement, unless the transferee of the right and interest agrees to assume all obligations of the cost share agreement; and supply information as required by CCC to determine compliance with the cost share agreement and requirements of AMA. The participant and NRCS must certify that a conservation practice is completed in accordance with the cost share agreement before CCC will approve any cost-share payments.

With respect to land under an AMA cost share agreement which is inherited during the cost share agreement period, the \$50,000 per fiscal year limitation to any person will not apply to the extent that the payments from any cost share agreements on the inherited land cause an heir, who was party to an AMA cost share agreement on other lands prior to the inheritance, to exceed the annual limit.

With regard to cost share agreements on tribal land, Indian trust



land, or BIA allotted land, payments exceeding \$50,000 per fiscal year limitation may be made to the tribal venture if an official of the BIA or tribal official certifies in writing that no one person directly or indirectly will receive more than the fiscal year limitation.

#### Conservation Practice Operation and Maintenance

The cost share agreement will provide for the operation and maintenance of the conservation practices applied under the cost share agreement. The participant will operate and maintain the conservation practices for their intended purposes as agreed-to as part of the cost share agreement, and form CCC-1245, Practice Approval and Payment Application.

#### Additional Requirements and Information

Additional requirements and information pertaining to the AMA program relating to cost share agreements, administrative requirements, and other matters can be found on CCC form CCC-1200, Conservation Program Contract, and the appendix to form CCC-1200, both of which are available at local USDA service centers.

#### Civil Rights

NRCS and CCC have collected civil rights data on farmers/ranchers participating in conservation programs. Based on past participation, it is estimated that the funding being made available with this notice will not negatively or disproportionately affect minorities, women, or persons with disabilities who are program beneficiaries or applicants for program benefits in NRCS or CCC assisted programs.

#### Environmental Evaluation

This assistance, administered by NRCS, will be funded at a level for 2001 as determined by the Secretary. Depending on the level of funding, and based on the participation in existing soil and water conservation programs, it is estimated that this assistance could result in approximately 200 cost share agreements in the 15 States. On each farm or ranch, during the conservation planning process, the environmental effects of any proposed actions are evaluated on a case by case basis. That evaluation is used to determine whether further environmental analysis is required. Accordingly, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared for this notice.

Signed in Washington, DC, on May 23, 2001.  
Thomas A. Weber,  
Deputy Chief for Programs, Natural Resources Conservation Service.  
[FR Doc. 01-14151 Filed 6-5-01; 8:45 am]  
BILLING CODE 341

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0-16-P

**Federal Register Notice Announcing Availability of Agricultural  
Management Assistance Program Funds, 67 FR 11459  
(March 14, 2002)**

[Federal Register: March 14, 2002 (Volume 67, Number 50)]

[Notices]

[Page 11459-11461]

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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Agricultural Management Assistance

AGENCY: Commodity Credit Corporation, United States Department of  
Agriculture.

ACTION: Notice of availability of program funds for Agricultural  
Management Assistance.

-----  
SUMMARY: This notice announces the availability of funds for  
Agricultural Management Assistance (AMA) to implement Section 524(b) of  
the Federal Crop Insurance Act, 7 U.S.C. 1524(b), as added by Section  
133 of the Agricultural Risk Protection Act of 2000, Public Law 106-  
224. The Commodity Credit Corporation (CCC) administers the funds under  
the general supervision of a Vice President of the CCC who is the Chief  
of the Natural Resources Conservation Service (NRCS). CCC is

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announcing the availability of funds under Section 524(b) of the  
Federal Crop Insurance Act. Section 524(b) authorizes the Secretary of  
Agriculture to use \$10 million of CCC funds annually for cost-share  
assistance to producers in 15 States in which participation in the  
Federal Crop Insurance Program is historically low. The 15 States  
include Connecticut, Delaware, Maine, Maryland, Massachusetts, Nevada,  
New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Utah,  
Vermont, West Virginia, and Wyoming. The cost-share assistance will  
encourage and assist producers in the selected States to adopt natural  
resources conservation practices and investment strategies that will  
reduce or mitigate risks to their agricultural enterprises.

DATES: March 14, 2002 to September 30, 2002.

ADDRESSES: Address all comments to: Conservation Operations Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013-2890.

FOR FURTHER INFORMATION CONTACT: Mark W. Berkland, Director, or Gary Gross, AMA Program Manager, Conservation Operations Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013, (202) 720-1845, fax: 202-720-4265; Submit electronic comments to: mark.berkland@usda.gov or gary.gross@usda.gov.

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 524(b) of the Federal Crop Insurance Act, 7 U.S.C. 1524(b), was added by Section 133 of the Agricultural Risk Protection Act of 2000, (Pub. L. 106-224, June 22, 2000). Section 524(b) authorizes the Secretary of Agriculture (Secretary) to use \$10 million of CCC funds for cost-share assistance in 15 States where participation in the Federal Crop Insurance program is historically low. The 15 States designated by the Secretary are Connecticut, Delaware, Maine, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Utah, Vermont, West Virginia, and Wyoming. The Risk Management Agency (RMA), Agricultural Marketing Service (AMS), and NRCS will administer the funds in such amounts per agency as determined by the Secretary.

Section 524(b) (2) (A), (B), and (C), provides for cost-share assistance to producers to: construct or improve water management structures or irrigation structures; plant trees for windbreaks or improve water quality; and mitigate risks through production diversification or resource conservation practices, including soil erosion control, integrated pest management, or transition to organic farming.

Section 524(b) (2) (D) and (E), provides for cost-share assistance to producers to: enter into futures, hedging, or options contracts in a manner designed to help reduce production, price, or revenue risk; and enter into agricultural trade options as a hedging transaction to reduce production, price, or revenue risk.

This notice deals with the funding administered by NRCS, approximately \$7 million in fiscal year 2002, to carry out the conservation provisions of Section 524(b) (2) (A), (B), and (C).

The Chief of NRCS, on behalf of CCC, will determine the funds available to the States for financial and technical assistance.

The NRCS State Conservationist, in consultation with the State Technical Committee, will determine eligible practices using a locally led process. Eligible conservation practices will be those practices that improve soil or water management or water quality, or mitigate financial risk through resource conservation. AMA does not provide for incentive payments.

There will be a continuous signup period, with ranking cutoff dates as determined by the State Conservationist in consultation with the State Technical Committee.

The State Conservationist, in consultation with the State Technical Committee, will select applications based on State-developed ranking criteria and a ranking process, taking into account local and state priorities. The State Conservationist may also delegate the selection of applications to the local designated conservationist who will work

in consultation with the local USDA Work Group.

#### AMA Requirements

CCC will accept applications throughout the year. The State Conservationist, in consultation with the State Technical Committee, will widely distribute information on the availability of assistance and the State-specific goals. Information will be provided that explains the process to request assistance.

Applicants must own or control the land for which assistance is being sought and agree to implement specific eligible conservation practices on the land. The applicants must meet the definition of ``person'' as set out in Section 1001(5), of the Food Security Act, 7 U.S.C. 1308(5), as determined by the Farm Service Agency (FSA). Any cooperative association of producers that markets commodities for producers shall not be considered to be a person eligible for payment. The status of an individual or entity on the date of the application shall be the basis on which the determination of the number of persons involved in the farming operation is made. There will be a 5 to 10 year cost-share agreement period to install eligible practices. Cost-share practices need to be maintained for the life of the practice. The maximum payment to any one person under the AMA program is \$50,000 for any fiscal year.

The Federal share of cost-share payments shall be 75 percent of the cost of an eligible practice(s), based on percent of actual cost, percent of actual cost with not-to-exceed limits, flat rates, or average costs. Producers will be paid upon certification of the completion of the approved practice(s). Producers may contribute to the application of a cost-share practice through in-kind contributions. Eligible in-kind contributions include: personal labor; use of personal equipment; donated labor or materials; and use of on-hand or used materials that meet the requirements for the practice to be installed. In no instance shall the total financial contributions for an eligible practice from all public and private entity sources exceed 100 percent of the actual cost of the practice. Cost-share payments will not be made to a participant who has applied or initiated the application of a conservation practice prior to approval of the cost-share agreement.

Eligible participants must have control of the land for the life of the cost-share agreement period. An exception may be made by the Chief of NRCS in the case of land allotted by the Bureau of Indian Affairs (BIA), tribal land, or other instances in which the Chief of NRCS determines that there is sufficient assurance of control; or the applicant is a tenant of the land involved in agricultural production and the applicant provides CCC with the written concurrence of the landowner in order to apply an eligible practice(s).

Eligible land includes land used as agricultural land on which NRCS determines that assistance is needed to construct or improve watershed management structures or irrigation structures; plant trees to form windbreaks or to improve water quality; or to mitigate financial risk through production diversification or resource conservation practices, including soil erosion control, integrated pest management, or transition to organic

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farming. Additionally, land may only be considered for enrollment in AMA if NRCS determines that the land is privately-owned or publicly-

owned where the land is under private control for the length of the cost-share agreement and is included in the participant's operating unit. The conservation practices installed on public land must contribute to an improvement in the identified natural resource concern as well as benefit private land. The applicant must provide CCC with written authorization from the government landowner to apply the conservation practices. Land that is Federally recognized Tribal, BIA allotted, or Indian trust land may be considered for enrollment in AMA.

Applicants must submit an application (CCC-1200 form) to CCC to be considered for participation in AMA. Any producer who has eligible land may obtain and submit an application for participation in AMA at a USDA service center. Producers who are members of a joint operation shall file a single application for the joint operation. A NRCS conservationist will work with the applicant to collect the information necessary to evaluate the application using the State-developed ranking criteria.

#### Conservation Plan Requirement

A conservation plan is required for the area to be included in the AMA cost-share agreement and becomes the basis for developing the cost-share agreement. The conservation plan must be acceptable to NRCS; be approved by the local conservation district; be signed by the participant, designated conservationist, and the conservation district; and clearly identify the conservation practices that will be cost-shared with AMA funds and the non-cost shared practices needed in the conservation plan.

#### Cost-Share Agreement Requirements

Participants will enter into a cost-share agreement agreeing to implement eligible conservation practices. An AMA cost-share agreement will incorporate by reference all portions of a unit applicable to AMA and be for a duration of 5 to 10 years.

Cost-share agreements will incorporate all provisions as required by law or statute, including requirements to not conduct any practices on the farm or ranch unit of concern that would tend to defeat the purposes of the cost-share agreement; refund to CCC any AMA payments received with interest, and forfeit any future payments under AMA, on the violation of a term or condition of the cost-share agreement; refund all AMA payments received on the transfer of the right and interest of the producer in land subject to the cost-share agreement, unless the transferee of the right and interest agrees to assume all obligations of the cost-share agreement; and supply information as required by CCC to determine compliance with the cost-share agreement and requirements of AMA. The participant and NRCS must certify that a conservation practice is completed in accordance with the cost-share agreement before CCC will approve any cost-share payments.

With respect to land under an AMA cost-share agreement which is inherited during the cost-share agreement period, the \$50,000 per fiscal year limitation to any person will not apply to the extent that the payments from any cost-share agreements on the inherited land cause an heir, who was party to an AMA cost-share agreement on other lands prior to the inheritance, to exceed the annual limit.

With regard to cost-share agreements on tribal land, Indian trust land, or BIA allotted land, payments exceeding \$50,000 per fiscal year limitation may be made to the tribal venture if an official of the BIA

or tribal official certifies in writing that no one person directly or indirectly will receive more than the fiscal year limitation.

#### Conservation Practice Operation and Maintenance

The cost-share agreement will provide for the operation and maintenance of the conservation practices applied under the cost-share agreement. The participant will operate and maintain the conservation practices for their intended purposes as agreed-to as part of the cost-share agreement, and form CCC-1245, Practice Approval and Payment Application.

#### Additional Requirements and Information

Additional requirements and information pertaining to the AMA program relating to cost-share agreements, administrative requirements, and other matters can be found on CCC form CCC-1200, Conservation Program Contract, and the appendix to form CCC-1200, both of which are available at local USDA service centers.

#### Civil Rights

NRCS and CCC have collected civil rights data on farmers/ranchers participating in conservation programs. Based on past participation, it is estimated that the funding being made available with this notice will not negatively or disproportionately affect minorities, women, or persons with disabilities who are program beneficiaries or applicants for program benefits in NRCS or CCC assisted programs.

#### Environmental Evaluation

This assistance, administered by NRCS, will be funded at a level for 2002 as determined by the Secretary. Depending on the level of funding, and based on the participation in existing soil and water conservation programs, it is estimated that this assistance could result in approximately 230 cost-share agreements in the 15 States. On each farm or ranch, during the conservation planning process, the environmental effects of any proposed actions are evaluated on a case by case basis. That evaluation is used to determine whether further environmental analysis is required. Accordingly, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared for this notice.

Signed in Washington, DC, on August 23, 2001.  
Thomas A. Weber,  
Deputy Chief for Programs, Natural Resources Conservation Service.  
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